	Case 3:94-cv-00365-HDM-RAM Document 54 Filed 09/29/09 Page 1 of 3
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6	UNITED STATES DISTRICT COURT
7	DISTRICT OF NEVADA
8	
9	ROBERT L. STOCKMEIER,
10	Petitioner,) 3:94-0365-HDM-RAM) ORDER
11	VS.) ORDER) E.K. MCDANIEL, et al.,)
12	Respondents.
13	/ /
14	On June 10, 1996, this Court found the petitioner had not shown cause and prejudice
15	for the procedural default of his claims, and dismissed the petition for writ of habeas corpus.
16 17	Petitioner then filed a motion for relief from judgment on November 14, 2008, alleging that the state
18	district court issued an amended or supplemental PSI which corrected some of the false statements
19	made in the original PSI, and asserting that the amended or supplemental PSI contained changes that
20	were directly related to facts upon which this Court relied in dismissing the original petition (docket
21	#45 and #46). This Court denied the motion for relief from judgment, finding that the amended or
22	supplemental PSI and changes made therein did not change this Court's determination that petitioner
	had not shown cause and prejudice for the defaulted claims, or that counsel had acted deficiently

Petitioner has now filed a motion for leave to proceed *in former pauperis* on appeal (docket #50) and a request or motion for certificate of appealability (docket #51). The Court will deny the motion for leave to proceed *in forma pauperis* on appeal. Petitioner has never been granted

(docket #48).

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leave to proceed in forma pauperis in this action. Furthermore, the Court finds the appeal is not taken in good faith. Fed. R. App. P. 24. As the Court previously noted, the Court found petitioner had not shown cause and prejudice for the procedurally defaulted claims, and alternatively that petitioner had not shown that counsel acted deficiently. Moreover, the Court found that the amended or supplemental PSI did not change the Court's determination. 6 The Court will also deny the motion for certificate of appealability. In order to proceed with an appeal from this court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make "a substantial showing of the denial of a 9 constitutional right" to warrant a certificate of appealability. *Id.* The Supreme Court has held that a

The Supreme Court further illuminated the standard for issuance of a certificate of appealability in Miller-El v. Cockrell, 537 U.S. 322 (2003). The Court stated in that case:

constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the

We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in Slack, "[w]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

Id. at 1040 (quoting Slack, 529 U.S. at 484). The Court has considered the issues raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of appeal, and the Court determines that none meet that standard. Petitioner has not shown that reasonable jurists would find the Court's assessment debatable or wrong.

IT IS THEREFORE ORDERED that petitioner's motion for leave to proceed in forma pauperis on appeal (docket #50) is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for certificate of appealability

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	Case 3:94-cv-00365-HDM-RAM Document 54 Filed 09/29/09 Page 3 of 3
1	(docket #51) is DENIED .
2	Dated this 28 th day of September, 2009.
3	Howard & ME Killer
4	UNITED STATES DISTRICT JUDGE
5	UNITED STATES DISTRICT JUDGE
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